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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Peter J. Kaehler, et al.
Serial No.: 10/687,223
Filed: October 15, 2003

Confirmation No. 2931
Examiner: Amber L. Altschul
Art Unit: 3626
Docket: 110.0010001

Title: BENEFIT MANAGEMENT

Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

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Respectfully Submitted,
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9/19/2008
Date:

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Docket No.: 110.0010001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/687,223
Appellants: : Peter J. Kaehler, et al.
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APPEAL BRIEF

MS APPEAL BRIEF-PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madame:

This brief is presented under 37 CFR § 41.37 in support of an appeal from a Final Office Action of September 3, 2008 regarding the above-identified application. Notice of the Appeal was filed under 37 CFR § 41.31 on September 8, 2008.

This brief is accompanied by the fee set forth in 37 CFR § 41.20(b)(2), as described in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R.

§ 41.37:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims Appendix
- IX. Evidence Appendix
- X. Related Proceedings Appendix

Page 33 of this brief bears the attorney's signature.

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Peter L. Hauser having a principal place of residence at 16130 East Cholla Drive,
Fountain Hills, AZ 85268, U.S.A.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeal or interference.

III. STATUS OF CLAIMS

A. Total Claims: 1-34

B. Current Status of Claims:

1. Claims canceled: 13-18, 31, and 33-34
2. Claims withdrawn from consideration but not canceled: none
3. Claims pending: 1-12, 19-30, and 32
4. Claims allowed: none
5. Claims rejected: 1-12, 19-30, and 32
6. Claims objected to: none

C. Claims on Appeal: 1-12, 19-30, and 32

IV. STATUS OF AMENDMENTS

No claims have been amended, canceled or added subsequent to the Final
Office Action of September 3, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Independent claim 1 recites a system for benefits management (Title; Abstract; paragraph 0047, lines 3-4; paragraph 0052, lines 3-4; paragraph 0053, lines 4-5; paragraph 0060, line 6; paragraph 0061, line 2; paragraph 0070, lines 3-4; paragraph 0074, lines 3-4; paragraph 0075, lines 2-5; paragraph 0082, lines 8-9; and Figures 5-7) that includes a server (Abstract; paragraphs 0013-0015 inclusive; paragraph 0021, lines 1-25; paragraphs 0025-0027 inclusive; paragraph 0031, lines 9-11; Figure 1 at 102; and Figure 2 at 310) including an application interface (Abstract; paragraph 0028, lines 20-26; paragraph 0029, lines 7-11; paragraph 0031, lines 2-3 and 23-27; paragraph 0047, lines 7-12; paragraph 0048, lines 14-20; paragraphs 0055-0056 inclusive; paragraph 0061, lines 2-5; paragraph 0075, lines 2-6; and Figure 3 at 306) and access to a data store (Abstract; paragraph 0013, lines 22-27; paragraph 0014, lines 6-9; paragraph 0015, lines 1-10; and paragraph 0027, lines 12-15) having one or more client files (Abstract; and paragraph 0027, lines 9-15), wherein a client file includes a definable set of business rule instructions (Abstract; paragraph 0027, lines 16-20; paragraph 0033, lines 1-37; paragraphs 0035-0054 inclusive; paragraphs 0057-0079 inclusive; and Figures 4-7) executed by a processor (Abstract; paragraph 0013, lines 9-13 and 33-38; paragraph 0014, lines 9-14; and Figure 1 at 101, 105) to manage and administer benefits (Abstract; paragraph 0027, lines 17-24) and includes fund use rule instructions executed by a processor to access and apply funds to payment of claims from a plurality of accounts (Abstract; paragraph 0027, lines 0021-0024; paragraph 0033, lines 1-37; paragraph 0044, lines 1-14; paragraph 0046, lines 5-10; and Figure 8C at 813, 815).

The system also includes a program operable on the server to apply the definable set of business rules, wherein the instructions are executed by the processor to allow a plan sponsor to define a first defined set of the fund use rules (paragraph 0024, lines 4-9 and 18-20; paragraph 0027, lines 12-15; paragraph 0031, lines 16-23; paragraph 0033, lines 9-30; paragraph 0035, lines 1-14; paragraphs 0038-0043 inclusive; paragraph 0047, lines 1-7; paragraphs 0048-0049 inclusive; paragraph 0050; lines 1-21; paragraph 0051, lines 1-4; paragraph 0052-0059 inclusive; paragraph 0061; lines 10-13; paragraph 0065, lines 14-20; paragraphs 0067-0068 inclusive; paragraph 0069, lines 14 and 19-20; paragraphs 0071-0072 inclusive; paragraph 0073, lines 9-19, paragraph 0074, lines 1-9; paragraph 0078, lines 4 and 28; paragraphs 0084-0087 inclusive; Figure 4 at 405; Figure 5 at 501, 510, 514, 518, 505, 536, 540, 544; Figure 6 at 600-2, 601, 631, 635, 639, 605, 671, 675, 679; and Figure 7 at 703, 738, 742, 746) and a plan member to define a second defined set of the fund use rules (paragraph 0024, lines 18-20; paragraph 0035, lines 1-4 and 30-37; paragraph 0042, lines 1-4; paragraph 0043, lines 1-4; paragraph 0044, lines 1-4; paragraph 0045, lines 1-6; paragraph 0046, lines 9-10; paragraph 0050, line 15; paragraph 0051, lines 5-8; paragraphs 0055-0056 inclusive; paragraph 0059, line 16; paragraph 0061, line 13; paragraph 0069, lines 14-15 and 20; paragraph 0078, lines 5 and 10; paragraph 0084, lines 10-11; paragraph 0085, lines 9-10; paragraph 0086, lines 9-10; paragraph 0087, lines 4-5 and 8-9; Figure 4 at 409; Figure 5 at 512, 516, 520, 538, 542, 546; Figure 6 at 632, 636, 640, 672, 676, 680, 634, 638, 642, 674, 678, 682; and Figure 7 at 74, 744, 748) in order to define payment of at least a portion of a claim from between at least two different

employee benefit accounts (paragraph 0032, lines 1-18; paragraph 0033, lines 1-9; paragraph 0042, lines 1-9; paragraph 0044, lines 4-14; paragraph 0050, lines 1-21; paragraphs 0052-0056 inclusive; paragraphs 0058-0060 inclusive; paragraphs 0069-0070 inclusive; paragraphs 0073-0074 inclusive; paragraphs 0078-0079 inclusive; paragraph 0085, lines 7-21; Figure 3 at 320, 322-1 . . . 322-N; Figure 4 at 409; Figure 5 at 503, 507; Figure 6 at 603, 607, 646, 647, 648, 686, 687, 688; Figure 7 at 705; and Figure 8C at 804-3, 804-4, 813, 815, 817), dependent upon authority being granted by the plan sponsor (paragraph 0024, lines 4-9 and 18-21; paragraph 0031, lines 16-23; paragraph 0033, lines 9-19; paragraph 0035, lines 1-20; paragraph 0038, lines 1-5; paragraph 0042, lines 5-9; paragraph 0043, lines 4-8; paragraph 0044, lines 1-9; paragraph 0045, line 3; paragraph 0046, line 9; paragraph 0051, lines 1-4; paragraphs 0053-0056 inclusive; paragraph 0061, lines 9-13; paragraph 0073, line 9; Figure 4 at 405, 409; Figure 6 at 631, 633, 635, 637, 671, 673, 675, 677; and Figure 7 at 738, 742).

Independent claim 1 is argued together with dependent claims 2-12.

1. Claim 2 is dependent from independent claim 1 and recites that the at least two different employee benefit accounts are selected from the group of a health reimbursement arrangement (HRA) account (paragraph 0027, lines 23-24; paragraph 0032, line 15; paragraph 0033, lines 5-37; paragraph 0044, lines 8-10; paragraph 0050, lines 5-18; paragraph 0052, lines 13-14; paragraph 0053, lines 6-13; paragraph 0054, lines 1-9; paragraph 0059, lines 5-19; paragraph 0069, lines 5-12; paragraph 0073, lines 3-16; paragraph 0078, lines 5-29; paragraph 0082, lines 3-4; paragraph 0085, lines 8-21; paragraph 0086, lines 8-13; paragraph 0087, lines 7-

11; Figure 4 at 410-1; Figure 5 at 522, 546; Figure 6 at 643, 646, 683, 686; Figure 7 at 750; and Figures 8A-8E at 804-4), a flex spending account (FSA) (paragraph 0033, lines 1-5 and 9-37; paragraph 0044, lines 10-11; paragraph 0032, line 14; paragraph 0044, lines 8-11; paragraph 0050, lines 5-18; paragraph 0052, lines 18-19; paragraph 0053, lines 6-13; paragraph 0054, lines 1-9; paragraph 0059, lines 5-19; paragraph 0069, lines 5-12; paragraph 0073, lines 3-16; paragraph 0078, lines 5-29; paragraph 0082, lines 3-4; paragraph 0085, lines 8-21; Figure 4 at 410-2; Figure 5 at 524, 550; Figure 6 at 644, 647, 684, 687; Figure 7 at 752; and Figures 8A-8E at 804-3), a vacation account (paragraph 0044, lines 8-11; and Figure 4 at 410-3), a fitness club account (paragraph 0004, line 5; paragraph 0017, lines 13-17; paragraph 0032, lines 16-17; and Figure 4 at 410-N), a retiree health benefits account (paragraph 0004, line 4; paragraph 0017, lines 13-17; paragraph 0032, lines 16-17; and Figure 4 at 410-N), and a salon account (paragraph 0004, lines 5-6; paragraph 0017, lines 13-17; paragraph 0032, lines 16-17; and Figure 4 at 410-N).

2. Claim 3 is dependent from independent claim 1 and recites that the definable set of business rules are definable by a plan sponsor of a health insurance plan (paragraph 0024, lines 4-9 and 18-20; paragraph 0027, lines 12-15; paragraph 0031, lines 16-23; paragraph 0033, lines 9-30; paragraph 0035, lines 1-14; paragraphs 0038-0043 inclusive; paragraph 0047, lines 1-7; paragraphs 0048-0049 inclusive; paragraph 0050; lines 1-21; paragraph 0051, lines 1-4; paragraph 0052-0059 inclusive; paragraph 0061; lines 10-13; paragraph 0065, lines 14-20; paragraphs 0067-0068 inclusive; paragraph 0069, lines 14 and 19-20; paragraphs 0071-0072 inclusive; paragraph 0073, lines 9-19, paragraph 0074, lines 1-9;

paragraph 0078, lines 4 and 28; paragraphs 0084-0087 inclusive; Figure 4 at 405; Figure 5 at 501, 510, 514, 518, 505, 536, 540, 544; Figure 6 at 600-2, 601, 631, 635, 639, 605, 671, 675, 679; and Figure 7 at 703, 738, 742, 746).

3. Claim 4 is dependent from independent claim 1 and recites that the one or more client files include plan sponsor files associated with a health care insurance plan (paragraph 0027, lines 7-11 and 19-24).

4. Claim 5 is dependent from dependent claim 4 and recites that the program tracks adjudicated claims submitted by the plan member (paragraph 0027, lines 3-5; paragraph 0046, lines 1-10) and applies the definable set of business rules to manage available funds (Abstract; paragraph 0027, lines 21-24; paragraph 0042, lines 1-4; paragraph 0044, lines 4-14; paragraph 0046, lines 8-10) in a flexible spending account (FSA) and a health reimbursement arrangement (HRA) account (see claim 2) secondary to application of a plan carrier's business rules for the health care insurance plan (paragraph 0020, lines 18-21; paragraph 0024, lines 18-20; paragraph 0035, lines 1-6 and 14-20; paragraphs 0036-0037 inclusive; paragraph 0043, lines 5-8; paragraph 0061, lines 9-12; paragraphs 0062-0064 inclusive; paragraph 0075, lines 6-17; paragraph 0083, lines 5-13; Figure 4 at 401; Figure 6 at 601-1, 601-N, 699; and Figure 7 at 700-1, 700-2, 700-N).

5. Claim 6 is dependent from independent claim 1 and recites that the definable set of business rules includes a selection of which funds between a flexible spending account (FSA) and a health reimbursement arrangement (HRA) are to be applied first to an adjudicated claim determined among selected categories within particular classes of services (paragraphs 0052-0056 inclusive; paragraph

0077, lines 9-12; paragraph 0078, lines 11-29; paragraph 0085, lines 3-7; Figure 5 at 522, 546; and Figure 6 at 643, 646, 683), and a selection of a payment relationship between the plan sponsor and the plan member among selected categories within particular classes of services (paragraph 0038, lines 1-36; paragraph 0040, lines 1-12; and paragraph 0041, lines 16-19).

6. Claim 7 is dependent from dependent claim 6 and recites that the selected categories include categories selected from the group of an insured category (paragraph 0036, lines 1-11; paragraph 0037, lines 1-4; paragraphs 0039-0040 inclusive; paragraph 0048, lines 1-4; paragraph 0061, lines 11-12; paragraph 0062, lines 1-19; paragraphs 0075-0076 inclusive; Figure 4 at 401; Figure 6 at 601-1, 601-N, 699; Figure 7 at 700-1, 700-2, 700-N; and Figures 8A-8E at 804-1), a co-pay category (paragraph 0037, lines 4-8; paragraph 0041, lines 1-6; paragraph 0048, lines 1-13; paragraph 0065, lines 12-20; Figure 4 at 402-1, 404-1, 406-1, 408-1; and Figure 6 at 601, 606, 608, 616, 620, 624, 628), a deductible category (paragraph 0037, lines 13-19; paragraph 0041, lines 11-15; paragraph 0063, lines 1-3; paragraph 0064, lines 1-21; paragraph 0075, lines 10-11; paragraph 0076, lines 13-19; paragraph 0077, lines 1-18; paragraph 0085, lines 1-21; Figure 4 at 402-N, 404-N, 406-N, 408-N; Figure 6 at 610, 612; Figure 7 at 703; and Figure 8C at 804-2, 804-3, 804-4, 811, 813, 815, 817), a co-insurance category (paragraph 0037, lines 8-13; paragraph 0041, lines 6-11; paragraphs 0057-0060 inclusive; paragraphs 0071-0073 inclusive; paragraph 0086, lines 1-13; Figure 4 at 402-2, 404-2, 406-2, 408-2; Figure 5 at 505, 507; Figure 6 at 605, 607; and Figure 8D at 804-2, 804-4, 819, 821, 823), and an ineligible category (paragraph 0017, lines 1-29; paragraph 0031, lines

1-16; paragraph 0087, lines 1-11; Figure 3 at 317, 318; Figure 4 at 405, 409; and Figure 8E at 825, 827).

7. Claim 8 is dependent from dependent claim 6 and recites that particular classes of services include in-network classes and out-of-network classes (paragraph 0020, lines 21-24; paragraph 0036, lines 1-11; paragraph 0037, lines 1-13; paragraph 0039, lines 1-14; paragraph 0041, lines 1-11; paragraphs 0062-0076 inclusive; Figure 4 at 401, 405; Figure 6 at 601-1, 699; and Figure 7 at 700-1, 700-2) for services selected from the group of a preventive care service (paragraph 0038, lines 17-18), an office visit (paragraph 0038, line 18), a hospital service (paragraph 0038, line 18), an urgent care center service (paragraph 0038, lines 18-19), a prescription service (paragraph 0038, line 19), a dental service (paragraph 0038, line 21), a vision service (paragraph 0038, lines 21-22), a chemical dependency service (paragraph 0038, lines 20-21), and an emergency room service (paragraph 0038, line 22).

8. Claim 9 is dependent from dependent claim 6 and recites that the selection of a payment relationship includes a plan sponsor rule selection from among the group of a percentage payment amount (paragraph 0047, lines 10-15; paragraph 0048, lines 1-21; paragraph 0049, lines 1-6; paragraph 0057, lines 1-11; paragraph 0058, lines 1-6; paragraph 0065, lines 8-17; paragraph 0067, lines 1-16; paragraph 0071, lines 1-3; paragraph 0072, lines 5-9; paragraph 0077, lines 1-18; Figure 5 at 502, 504, 528, 530; Figure 6 at 616, 618, 620, 622, 650, 652, 654, 656; and Figure 7 at 720, 724), and a fixed payment amount (paragraph 0048, lines 1-21; paragraph 0049, lines 6-12; paragraph 0057, lines 1-6; paragraph 0058, lines 6-12;

paragraph 0065, lines 8-14; paragraph 0067, lines 6-9; paragraph 0068, lines 1-9; paragraph 0071, lines 1-11; paragraph 0072, lines 1-9; paragraph 0077, lines 1-18; paragraph 0086, lines 1-7; Figure 5 at 506, 508, 532, 534; Figure 6 at 624, 626, 628, 630, 658, 660, 662, 664; Figure 7 at 722, 726; and Figure 8D at 804-2, 819, 823) among selected categories within particular classes of services.

9. Claim 10 is dependent from dependent claim 6 and recites that the selection of which funds between the FSA and the HRA are to be applied includes a selection of a plan sponsor rule and a member rule (paragraph 0040, lines 1-12; paragraph 0042, lines 1-9; paragraph 0045, lines 1-6; paragraph 0050, lines 1-21; paragraph 0059, lines 1-22; paragraph 0069, lines 1-20; paragraph 0073, lines 1-19; paragraph 0078, lines 1-29; paragraphs 0081-0087 inclusive; Figure 4 at 405, 409; Figure 5 at 510, 512, 514, 520, 536, 538, 540, 546; Figure 6 at 631-638, 671-678; Figure 7 at 738, 740, 742, 748; and Figure 8C at 804-2, 804-3, 804-4, 811, 813, 815).

10. Claim 11 is dependent from independent claim 1 and recites that the one or more client files include one or more member files accessible from a remote device (paragraph 0013, lines 27-59; paragraph 0031, lines 23-39; paragraph 0040, lines 10-12; paragraph 0045, lines 3-6; paragraph 0047, lines 10-15; paragraph 0075, lines 1-6; paragraph 0081, lines 2-3; and Figure 1 at 104-1, 104-2, 104-N) by one or more entities having authorized access rights (paragraph 0014, lines 1-9; paragraph 0022, lines 29-37; paragraph 0027, lines 1-3; paragraph 0031, lines 21-23; paragraph 0034, lines 7-10) and that the one or more entities are selected from the group of the plan sponsor (paragraph 0022, lines 36-37; and

Figure 2 at 214-1 . . . 214-*P*), the plan member (paragraph 0022, line 36; and Figure 2 at 212-1 . . . 212-*M*), and a third party administrator (paragraph 0022, lines 31-35; Figure 2 at 206, 207).

11. Claim 12 is dependent from independent claim 1 and recites that each client file is associated with the plan sponsor (paragraph 0027, lines 11-19) and the plan sponsor accesses its associated client file from a remote device (paragraph 0013, lines 27-59; ; paragraph 0022, lines 36-37; paragraph 0031, lines 23-39; paragraph 0040, lines 10-12; paragraph 0045, lines 3-6; paragraph 0047, lines 10-15; paragraph 0075, lines 1-6; paragraph 0081, lines 2-3; Figure 1 at 104-1, 104-2, 104-*N*; and Figure 2 at 214-1 . . . 214-*P*) to select among the definable set of business rules.

B. Independent claim 19 recites a computer readable medium that includes a program having instructions executable by a processor (Abstract; paragraph 0013, lines 9-13 and 33-38; paragraph 0014, lines 9-14; and Figure 1 at 101, 105) to perform a method that includes defining a number of plan sponsor rules (paragraph 0024, lines 4-9 and 18-20; paragraph 0027, lines 12-15; paragraph 0031, lines 16-23; paragraph 0033, lines 9-30; paragraph 0035, lines 1-14; paragraphs 0038-0043 inclusive; paragraph 0047, lines 1-7; paragraphs 0048-0049 inclusive; paragraph 0050; lines 1-21; paragraph 0051, lines 1-4; paragraph 0052-0059 inclusive; paragraph 0061; lines 10-13; paragraph 0065, lines 14-20; paragraphs 0067-0068 inclusive; paragraph 0069, lines 14 and 19-20; paragraphs 0071-0072 inclusive; paragraph 0073, lines 9-19, paragraph 0074, lines 1-9; paragraph 0078, lines 4 and 28; paragraphs 0084-0087 inclusive; Figure 4 at 405; Figure 5 at 501,

510, 514, 518, 505, 536, 540, 544; Figure 6 at 600-2, 601, 631, 635, 639, 605, 671, 675, 679; and Figure 7 at 703, 738, 742, 746) to be applied secondary to the application of a set of business rules defined in a health insurance plan by a plan carrier (paragraphs 0020-0023 inclusive; paragraph 0024, lines 1-9 and 18-21; paragraph 0030, lines 1-8; paragraph 0031, lines 16-21; paragraphs 0035-0037 inclusive; paragraph 0038, lines 1-9; paragraph 0042, lines 5-9; paragraph 0043, lines 5-8; paragraph 0061, lines 9-12; Figure 2 at 204, 208; Figure 3 at 316; Figure 4 at 401; Figure 6 at 600-1, 601-1, 601-N, 699; and Figure 7 at 701, 700-1, 700-2, 700-N).

The method also includes defining a number of member rules to be applied in conjunction with the number of plan sponsor rules (paragraph 0024, lines 18-20; paragraph 0035, lines 1-4 and 30-37; paragraph 0042, lines 1-4; paragraph 0043, lines 1-4; paragraph 0044, lines 1-4; paragraph 0045, lines 1-6; paragraph 0046, lines 9-10; paragraph 0050, line 15; paragraph 0051, lines 5-8; paragraphs 0055-0056 inclusive; paragraph 0059, line 16; paragraph 0061, line 13; paragraph 0069, lines 14-15 and 20; paragraph 0078, lines 5 and 10; paragraph 0084, lines 10-11; paragraph 0085, lines 9-10; paragraph 0086, lines 9-10; paragraph 0087, lines 4-5 and 8-9; Figure 4 at 409; Figure 5 at 512, 516, 520, 538, 542, 546; Figure 6 at 632, 636, 640, 672, 676, 680, 634, 638, 642, 674, 678, 682; and Figure 7 at 74, 744, 748), wherein the instructions are executed by the processor to allow a plan sponsor to define the number of plan sponsor rules and a plan member to define the number of member rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts (paragraph 0032, lines 1-

18; paragraph 0033, lines 1-9; paragraph 0042, lines 1-9; paragraph 0044, lines 4-14; paragraph 0050, lines 1-21; paragraphs 0052-0056 inclusive; paragraphs 0058-0060 inclusive; paragraphs 0069-0070 inclusive; paragraphs 0073-0074 inclusive; paragraphs 0078-0079 inclusive; paragraph 0085, lines 7-21; Figure 3 at 320, 322-1 . . . 322-*N*; Figure 4 at 409; Figure 5 at 503, 507; Figure 6 at 603, 607, 646, 647, 648, 686, 687, 688; Figure 7 at 705; and Figure 8C at 804-3, 804-4, 813, 815, 817).

Independent claim 19 is argued together with dependent claims 20-25.

1. Claim 20 is dependent from independent claim 19 and recites that defining the number of plan sponsor rules includes selecting a payment relationship between the plan sponsor and the plan member (paragraph 0038, lines 1-36; paragraph 0040, lines 1-12; and paragraph 0041, lines 16-19) for handling a deductible payment associated with a particular claim type under the health insurance plan (paragraph 0037, lines 13-19; paragraph 0041, lines 11-15; paragraph 0063, lines 1-3; paragraph 0064, lines 1-21; paragraph 0075, lines 10-11; paragraph 0076, lines 13-19; paragraph 0077, lines 1-18; paragraph 0085, lines 1-21; Figure 4 at 402-*N*, 404-*N*, 406-*N*, 408-*N*; Figure 6 at 610, 612; Figure 7 at 703; and Figure 8C at 804-2, 804-3, 804-4, 811, 813, 815, 817).

2. Claim 21 is dependent from independent claim 19 and recites that defining the number of plan sponsor rules includes selecting a payment relationship between the plan sponsor and the plan member (paragraph 0038, lines 1-36; paragraph 0040, lines 1-12; and paragraph 0041, lines 16-19) for handling a co-payment associated with a particular claim type under the health insurance plan (paragraph 0037, lines 4-8; paragraph 0041, lines 1-6; paragraph 0048, lines 1-13;

paragraph 0065, lines 12-20; Figure 4 at 402-1, 404-1, 406-1, 408-1; and Figure 6 at 601, 606, 608, 616, 620, 624, 628).

3. Claim 22 is dependent from independent claim 19 and recites that defining the number of plan sponsor rules includes selecting a payment relationship between the plan sponsor and the plan member (paragraph 0038, lines 1-36; paragraph 0040, lines 1-12; and paragraph 0041, lines 16-19) for handling a coinsurance payment associated with a particular claim type under the health insurance plan (paragraph 0037, lines 8-13; paragraph 0041, lines 6-11; paragraphs 0057-0060 inclusive; paragraphs 0071-0073 inclusive; paragraph 0086, lines 1-13; Figure 4 at 402-2, 404-2, 406-2, 408-2; Figure 5 at 505, 507; Figure 6 at 605, 607; and Figure 8D at 804-2, 804-4, 819, 821, 823).

4. Claim 23 is dependent from independent claim 19 and recites that defining the number of plan sponsor rules includes the plan sponsor selecting a hierarchy among a number of plan member health benefit accounts for application of funds to payment of a particular claim type under the health insurance plan (paragraphs 0052-0060 inclusive; paragraphs 0070-0074 inclusive; paragraph 0078, lines 1-4; paragraph 0079, lines 1-8; paragraph 0085, lines 8-21; Figure 4 at 409; Figure 5 at 510, 514, 522, 524, 536, 540, 546, 550; Figure 6 at 631, 633, 635, 637, 643, 644, 646, 647, 671, 673, 675, 677, 683, 684, 686, 687; Figure 7 at 738, 742, 750, 752; and Figure 8C at 804-3, 804-4, 813, 815, 817).

5. Claim 24 is dependent from dependent claim 23 and recites that defining the number of member rules includes the plan member selecting a hierarchy among a number of plan member health benefit accounts for application

of funds to payment of a particular claim type under the health insurance plan secondary to implementation of the number of plan sponsor rules (paragraph 0044, lines 1-14; paragraph 0055, lines 1-6; paragraph 0078, lines 1-29; paragraph 0085, lines 8-13; Figure 4 at 409; Figure 5 at 512, 516, 522, 524, 538, 542, 546, 550; Figure 6 at 632, 634, 636, 638, 643, 644, 646, 647, 672, 674, 676, 678, 683, 684, 686, 687; and Figure 7 at 740, 744, 750, 752).

6. Claim 25 is dependent from independent claim 19 and recites that the method further includes tracking usage and available balances in a number of plan member health benefit accounts according to the number of plan sponsor rules and member rules (paragraph 0034, lines 1-10; paragraph 0046, lines 1-10).

C. Independent claim 26 recites a method for providing benefits that includes selecting a health benefit plan offered by a plan carrier (paragraph 0035, lines 6-20; paragraph 0037, lines 13-25) and further defining rules in addition to rules defined for the health benefit plan by the plan carrier (paragraph 0024, lines 4-9 and 18-20; paragraph 0027, lines 12-15; paragraph 0031, lines 16-23; paragraph 0033, lines 9-30; paragraph 0035, lines 1-14; paragraphs 0038-0043 inclusive; paragraph 0047, lines 1-7; paragraphs 0048-0049 inclusive; paragraph 0050; lines 1-21; paragraph 0051, lines 1-4; paragraph 0052-0059 inclusive; paragraph 0061; lines 10-13; paragraph 0065, lines 14-20; paragraphs 0067-0068 inclusive; paragraph 0069, lines 14 and 19-20; paragraphs 0071-0072 inclusive; paragraph 0073, lines 9-19, paragraph 0074, lines 1-9; paragraph 0078, lines 4 and 28; paragraphs 0084-0087 inclusive; Figure 4 at 405; Figure 5 at 501, 510, 514, 518, 505, 536, 540, 544; Figure 6 at 600-2, 601, 631, 635, 639, 605, 671, 675, 679; and

Figure 7 at 703, 738, 742, 746) in order to manage fund allocation (Abstract; paragraph 0027, lines 17-24) from a plurality of plan member benefit accounts (Abstract; paragraph 0027, lines 0021-0024; paragraph 0033, lines 1-37; paragraph 0044, lines 1-14; paragraph 0046, lines 5-10; and Figure 8C at 813, 815), including a health reimbursement account (paragraph 0027, lines 23-24; paragraph 0032, line 15; paragraph 0033, lines 5-37; paragraph 0044, lines 8-10; paragraph 0050, lines 5-18; paragraph 0052, lines 13-14; paragraph 0053, lines 6-13; paragraph 0054, lines 1-9; paragraph 0059, lines 5-19; paragraph 0069, lines 5-12; paragraph 0073, lines 3-16; paragraph 0078, lines 5-29; paragraph 0082, lines 3-4; paragraph 0085, lines 8-21; paragraph 0086, lines 8-13; paragraph 0087, lines 7-11; Figure 4 at 410-1; Figure 5 at 522, 546; Figure 6 at 643, 646, 683, 686; Figure 7 at 750; and Figures 8A-8E at 804-4), according to different categories of services (paragraph 0017, lines 1-29; paragraph 0031, lines 1-16; paragraph 0036, lines 1-11; paragraph 0037, lines 1-19; paragraphs 0039-0040 inclusive; paragraph 0041, lines 6-15; paragraph 0048, lines 1-13; paragraphs 0057-0060 inclusive; paragraph 0061, lines 11-12; paragraph 0062, lines 1-19; paragraph 0063, lines 1-3; paragraph 0064, lines 1-21; paragraph 0065, lines 12-20; paragraphs 0071-0073 inclusive; paragraphs 0075-0076 inclusive; paragraph 0077, lines 1-18; paragraph 0085, lines 1-21; paragraph 0086, lines 1-13; paragraph 0087, lines 1-11; Figure 3 at 317, 318; Figure 4 at 401, 402-1, 402-2, 402-N, 404-1, 404-2, 404-N, 405, 406-1, 406-2, 406-N, 408-1, 408-2, 408-N; 409; Figure 5 at 505, 507; Figure 6 at 601, 601-1, 601-N, 605, 606, 607, 608, 610, 612, 616, 620, 624, 628, 699; Figure 7 at 700-1, 700-2, 700-N, 703; Figures 8A-8E

at 804-1; Figure 8C at 804-2, 804-3, 804-4, 811, 813, 815, 817; Figure 8D at 804-2, 804-4, 819, 821, 823; and Figure 8E at 825, 827).

The method also includes allowing a plan sponsor to define a first defined set of fund use rules (paragraph 0024, lines 4-9 and 18-20; paragraph 0027, lines 12-15; paragraph 0031, lines 16-23; paragraph 0033, lines 9-30; paragraph 0035, lines 1-14; paragraphs 0038-0043 inclusive; paragraph 0047, lines 1-7; paragraphs 0048-0049 inclusive; paragraph 0050; lines 1-21; paragraph 0051, lines 1-4; paragraph 0052-0059 inclusive; paragraph 0061; lines 10-13; paragraph 0065, lines 14-20; paragraphs 0067-0068 inclusive; paragraph 0069, lines 14 and 19-20; paragraphs 0071-0072 inclusive; paragraph 0073, lines 9-19, paragraph 0074, lines 1-9; paragraph 0078, lines 4 and 28; paragraphs 0084-0087 inclusive; Figure 4 at 405; Figure 5 at 501, 510, 514, 518, 505, 536, 540, 544; Figure 6 at 600-2, 601, 631, 635, 639, 605, 671, 675, 679; and Figure 7 at 703, 738, 742, 746) and a plan member to define a second defined set of fund use rules (paragraph 0024, lines 18-20; paragraph 0035, lines 1-4 and 30-37; paragraph 0042, lines 1-4; paragraph 0043, lines 1-4; paragraph 0044, lines 1-4; paragraph 0045, lines 1-6; paragraph 0046, lines 9-10; paragraph 0050, line 15; paragraph 0051, lines 5-8; paragraphs 0055-0056 inclusive; paragraph 0059, line 16; paragraph 0061, line 13; paragraph 0069, lines 14-15 and 20; paragraph 0078, lines 5 and 10; paragraph 0084, lines 10-11; paragraph 0085, lines 9-10; paragraph 0086, lines 9-10; paragraph 0087, lines 4-5 and 8-9; Figure 4 at 409; Figure 5 at 512, 516, 520, 538, 542, 546; Figure 6 at 632, 636, 640, 672, 676, 680, 634, 638, 642, 674, 678, 682; and Figure 7 at 74, 744, 748) in order to define payment of at least a portion of a claim from between at least two

different employee benefit accounts (paragraph 0032, lines 1-18; paragraph 0033, lines 1-9; paragraph 0042, lines 1-9; paragraph 0044, lines 4-14; paragraph 0050, lines 1-21; paragraphs 0052-0056 inclusive; paragraphs 0058-0060 inclusive; paragraphs 0069-0070 inclusive; paragraphs 0073-0074 inclusive; paragraphs 0078-0079 inclusive; paragraph 0085, lines 7-21; Figure 3 at 320, 322-1 . . . 322-N; Figure 4 at 409; Figure 5 at 503, 507; Figure 6 at 603, 607, 646, 647, 648, 686, 687, 688; Figure 7 at 705; and Figure 8C at 804-3, 804-4, 813, 815, 817), dependent upon authority being granted by the plan sponsor (paragraph 0024, lines 4-9 and 18-21; paragraph 0031, lines 16-23; paragraph 0033, lines 9-19; paragraph 0035, lines 1-20; paragraph 0038, lines 1-5; paragraph 0042, lines 5-9; paragraph 0043, lines 4-8; paragraph 0044, lines 1-9; paragraph 0045, line 3; paragraph 0046, line 9; paragraph 0051, lines 1-4; paragraphs 0053-0056 inclusive; paragraph 0061, lines 9-13; paragraph 0073, line 9; Figure 4 at 405, 409; Figure 6 at 631, 633, 635, 637, 671, 673, 675, 677; and Figure 7 at 738, 742).

Independent claim 26 is argued together with dependent claims 27-30 and 32.

1. Claim 27 is dependent from independent claim 26 and recites further defining a number of plan sponsor rules associated with different categories of services (paragraph 0024, lines 4-9 and 18-20; paragraph 0027, lines 12-15; paragraph 0031, lines 16-23; paragraph 0033, lines 9-30; paragraph 0035, lines 1-14; paragraphs 0038-0043 inclusive; paragraph 0047, lines 1-7; paragraphs 0048-0049 inclusive; paragraph 0050; lines 1-21; paragraph 0051, lines 1-4; paragraph 0052-0059 inclusive; paragraph 0061; lines 10-13; paragraph 0065, lines 14-20;

paragraphs 0067-0068 inclusive; paragraph 0069, lines 14 and 19-20; paragraphs 0071-0072 inclusive; paragraph 0073, lines 9-19, paragraph 0074, lines 1-9; paragraph 0078, lines 4 and 28; paragraphs 0084-0087 inclusive; Figure 4 at 405; Figure 5 at 501, 510, 514, 518, 505, 536, 540, 544; Figure 6 at 600-2, 601, 631, 635, 639, 605, 671, 675, 679; and Figure 7 at 703, 738, 742, 746).

2. Claim 28 is dependent from independent claim 26 and recites further defining a number of member rules associated with different categories of services (paragraph 0024, lines 18-20; paragraph 0035, lines 1-4 and 30-37; paragraph 0042, lines 1-4; paragraph 0043, lines 1-4; paragraph 0044, lines 1-4; paragraph 0045, lines 1-6; paragraph 0046, lines 9-10; paragraph 0050, line 15; paragraph 0051, lines 5-8; paragraphs 0055-0056 inclusive; paragraph 0059, line 16; paragraph 0061, line 13; paragraph 0069, lines 14-15 and 20; paragraph 0078, lines 5 and 10; paragraph 0084, lines 10-11; paragraph 0085, lines 9-10; paragraph 0086, lines 9-10; paragraph 0087, lines 4-5 and 8-9; Figure 4 at 409; Figure 5 at 512, 516, 520, 538, 542, 546; Figure 6 at 632, 636, 640, 672, 676, 680, 634, 638, 642, 674, 678, 682; and Figure 7 at 74, 744, 748).

3. Claim 29 is dependent from independent claim 26 and recites that further defining rules includes selecting which funds between funds in multiple health benefit accounts are to be applied first to a post-adjudicated claim under the health care plan according to various claim type categories (paragraphs 0052-0056 inclusive; paragraph 0077, lines 9-12; paragraph 0078, lines 11-29; paragraph 0085, lines 3-7; Figure 5 at 522, 546; and Figure 6 at 643, 646, 683), and selecting a payment relationship between the plan sponsor and the plan member according to

various claim type categories associated with different types of services (paragraph 0038, lines 1-36; paragraph 0040, lines 1-12; and paragraph 0041, lines 16-19).

4. Claim 30 is dependent from dependent claim 29 and recites that selecting the payment relationship includes defining a plan sponsor percentage payment amount for a claim type category associated with different types of services (paragraph 0047, lines 10-15; paragraph 0048, lines 1-21; paragraph 0049, lines 1-6; paragraph 0057, lines 1-11; paragraph 0058, lines 1-6; paragraph 0065, lines 8-17; paragraph 0067, lines 1-16; paragraph 0071, lines 1-3; paragraph 0072, lines 5-9; paragraph 0077, lines 1-18; Figure 5 at 502, 504, 528, 530; Figure 6 at 616, 618, 620, 622, 650, 652, 654, 656; and Figure 7 at 720, 724), and a fixed payment amount (paragraph 0048, lines 1-21; paragraph 0049, lines 6-12; paragraph 0057, lines 1-6; paragraph 0058, lines 6-12; paragraph 0065, lines 8-14; paragraph 0067, lines 6-9; paragraph 0068, lines 1-9; paragraph 0071, lines 1-11; paragraph 0072, lines 1-9; paragraph 0077, lines 1-18; paragraph 0086, lines 1-7; Figure 5 at 506, 508, 532, 534; Figure 6 at 624, 626, 628, 630, 658, 660, 662, 664; Figure 7 at 722, 726; and Figure 8D at 804-2, 819, 823), and wherein the claim type is selected from the group including an insured category (paragraph 0036, lines 1-11; paragraph 0037, lines 1-4; paragraphs 0039-0040 inclusive; paragraph 0048, lines 1-4; paragraph 0061, lines 11-12; paragraph 0062, lines 1-19; paragraphs 0075-0076 inclusive; Figure 4 at 401; Figure 6 at 601-1, 601-*N*, 699; Figure 7 at 700-1, 700-2, 700-*N*; and Figures 8A-8E at 804-1), a co-pay category (paragraph 0037, lines 4-8; paragraph 0041, lines 1-6; paragraph 0048, lines 1-13; paragraph 0065, lines 12-20; Figure 4 at 402-1, 404-1, 406-1, 408-1; and Figure 6 at 601, 606, 608, 616, 620,

624, 628), a deductible category (paragraph 0037, lines 13-19; paragraph 0041, lines 11-15; paragraph 0063, lines 1-3; paragraph 0064, lines 1-21; paragraph 0075, lines 10-11; paragraph 0076, lines 13-19; paragraph 0077, lines 1-18; paragraph 0085, lines 1-21; Figure 4 at 402-N, 404-N, 406-N, 408-N; Figure 6 at 610, 612; Figure 7 at 703; and Figure 8C at 804-2, 804-3, 804-4, 811, 813, 815, 817), and a co-insurance category (paragraph 0037, lines 8-13; paragraph 0041, lines 6-11; paragraphs 0057-0060 inclusive; paragraphs 0071-0073 inclusive; paragraph 0086, lines 1-13; Figure 4 at 402-2, 404-2, 406-2, 408-2; Figure 5 at 505, 507; Figure 6 at 605, 607; and Figure 8D at 804-2, 804-4, 819, 821, 823).

5. Claim 32 is dependent from dependent claim 29 and recites that selecting the payment relationship includes defining a plan sponsor fixed payment amount for a claim type category associated with different types of services (paragraph 0048, lines 1-21; paragraph 0049, lines 6-12; paragraph 0057, lines 1-6; paragraph 0058, lines 6-12; paragraph 0065, lines 8-14; paragraph 0067, lines 6-9; paragraph 0068, lines 1-9; paragraph 0071, lines 1-11; paragraph 0072, lines 1-9; paragraph 0077, lines 1-18; paragraph 0086, lines 1-7; Figure 5 at 506, 508, 532, 534; Figure 6 at 624, 626, 628, 630, 658, 660, 662, 664; Figure 7 at 722, 726; and Figure 8D at 804-2, 819, 823), and wherein the claim type is selected from the group including an insured category (paragraph 0036, lines 1-11; paragraph 0037, lines 1-4; paragraphs 0039-0040 inclusive; paragraph 0048, lines 1-4; paragraph 0061, lines 11-12; paragraph 0062, lines 1-19; paragraphs 0075-0076 inclusive; Figure 4 at 401; Figure 6 at 601-1, 601-N, 699; Figure 7 at 700-1, 700-2, 700-N; and Figures 8A-8E at 804-1), a co-pay category (paragraph 0037, lines 4-8; paragraph

0041, lines 1-6; paragraph 0048, lines 1-13; paragraph 0065, lines 12-20; Figure 4 at 402-1, 404-1, 406-1, 408-1; and Figure 6 at 601, 606, 608, 616, 620, 624, 628), a deductible category (paragraph 0037, lines 13-19; paragraph 0041, lines 11-15; paragraph 0063, lines 1-3; paragraph 0064, lines 1-21; paragraph 0075, lines 10-11; paragraph 0076, lines 13-19; paragraph 0077, lines 1-18; paragraph 0085, lines 1-21; Figure 4 at 402-*N*, 404-*N*, 406-*N*, 408-*N*; Figure 6 at 610, 612; Figure 7 at 703; and Figure 8C at 804-2, 804-3, 804-4, 811, 813, 815, 817), and a co-insurance category (paragraph 0037, lines 8-13; paragraph 0041, lines 6-11; paragraphs 0057-0060 inclusive; paragraphs 0071-0073 inclusive; paragraph 0086, lines 1-13; Figure 4 at 402-2, 404-2, 406-2, 408-2; Figure 5 at 505, 507; Figure 6 at 605, 607; and Figure 8D at 804-2, 804-4, 819, 821, 823).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether or not claims 1-12, 19-30, and 32 are unpatentable under 35 USC § 103(a) over Lencki, et al. (U.S. Publ. No. 2002/0049617)(System and Method for Facilitating Selection of Benefits) in view of Deavers, et al. (U.S. Patent No. 6,044,352)(Method and System for Processing and Recording the Transactions in a Medical Savings Fund Account).

VII. ARGUMENT

A. Arguments against the rejections under § 103(a) over the Lencki '617 reference in view of the Deavers '352 reference.

1. Arguments regarding independent claims 1, 19, and 26.

a. **For independent claims 1, 19, and 26, the cited references do not teach, suggest, or render obvious each and every element.**

In response to the Office Action mailed on January 25, 2008, Appellant submitted a proposed listing of claims for consideration by the Examiner in overcoming the § 102(b) rejection of all claims as being allegedly anticipated by the Lencki '617 reference. The submission was made for consideration of proposed amendments by the Examiner prior to an interview scheduled for April 15, 2008. The proposed amendments substantive to the present appeal were to independent claims 1, 19, and 26. These independent claims are recited below, in particular the elements applicable to overcoming the § 102(b) rejection, which were discussed with the Examiner during the interview on April 15, 2008.

Appellant's independent claim 1, as proposed, recited:

a server including an application interface and access to a data store having one or more client files, wherein a client file includes a definable set of business rule instructions executed by a processor to manage and administer benefits and includes fund use rule instructions executed by a processor to access and apply funds to payment of claims from a plurality of accounts; and

a program operable on the server to apply the definable set of business rules, wherein the instructions are executed by the processor to allow a plan sponsor to define a first defined set of the fund use rules and a plan member to define a second defined set of the fund use rules in order to define payment of at least a portion of a claim

from between at least two different employee benefit accounts,

dependent upon authority being granted by the plan sponsor.

Appellant's independent claim 19, as proposed, recited in part:

defining a number of member rules to be applied in
conjunction with the number of plan sponsor rules, wherein the
instructions are executed by the processor to allow a plan sponsor to
define the number of plan sponsor rules and a plan member to define
the number of member rules in order to define payment of at least a
portion of a claim from between at least two different employee
benefit accounts.

In addition, Appellant's independent claim 26, as proposed, recited in part:

allowing a plan sponsor to define a first defined set of fund
use rules and a plan member to define a second defined set of fund
use rules in order to define payment of at least a portion of a claim
from between at least two different employee benefit accounts,
dependent upon authority being granted by the plan sponsor.

During the interview, Appellant respectfully submitted to the Examiner that the Lencki '617 reference appears to describe a "System and Method for Facilitating Selection of Benefits". (Title). Appellant also respectfully submitted, as a specific example, that the Lencki '617 reference does not teach, "wherein the instructions are executed by the processor . . . in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts", as recited in the second element of Appellant's independent claim 1, as proposed. Appellant

additionally submitted, as a specific example, that the Lencki '617 reference does not teach, "instructions executed by a processor to access and apply funds to payment of claims from a plurality of accounts", as recited in the first element of independent claim 1, as proposed.

During the interview, Appellant and the Examiner endeavored to determine whether the proposed amendments were sufficient to overcome the § 102(b) rejection of, in particular, independent claims 1, 19, and 26. There appeared to be a meeting of the minds that the material added to independent claims 1, 19, and 26 is not taught by the Lencki '617 reference. Accordingly, Appellant amended a number of claims in a formal response to the Office Action submitted on April 17, 2008, including amendments to independent claims 1, 19, and 26 consistent with the proposed amendments that were submitted to, considered by, and discussed with the Examiner.

Appellant further notes that neither the Lencki '617 reference nor the Deavers '352 reference, as discussed below, teach, suggest, or make obvious, "to allow a plan sponsor to define a first defined set of the fund use rules **and** a plan member to define a second defined set of the fund use rules" as applied to defining "payment of at least a portion of a claim **from** between at least **two different employee benefit accounts**", as recited in the second element of Appellant's independent claim 1, as proposed. That is, neither reference, individually or in combination, teaches, suggests, or makes obvious fund use rules that allow a plan sponsor to define payment of at least a portion of a claim **from** between at least **two different employee benefit accounts** and that allow a plan member to define

payment of at least a portion of a claim **from** between at least **two different employee benefit accounts**, dependent upon authority being granted by the plan sponsor.

After a Final Office Action was mailed July 18, 2008, the Examiner was gracious enough to grant another interview on July 25, 2008. The Examiner mailed an Interview Summary on August 8, 2008, that summarized the Substance of Interview as:

Claim rejections will be reconsidered in light of formally written amendments to the claims. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

A subsequent Final Office Action was mailed on September 3, 2008, in which the Examiner rejected all claims of the present application, including independent claims 1, 19, and 26, as previously amended, by combining the Deavers '352 reference with the Lencki '617 reference as bases for a § 103(a) rejection. In section 5 of the FOA, the Examiner acknowledged that "Lencki does not explicitly teach payments from a plurality of accounts." Hence, Appellant respectfully submits that the Lencki '617 reference does not teach, suggest, or make obvious each and every element and limitation, in particular, of independent claims 1, 19, and 26, as previously presented.

That is, Appellant respectfully submits that the Lencki '617 reference does not teach, suggest, or make obvious:

a program operable on the server to apply the definable set of business rules, wherein the instructions are executed by the processor to allow a plan sponsor to define a first defined set of the fund use rules **and** a plan member to define a second defined set of the fund use rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts, dependent upon authority being granted by the plan sponsor.

as recited in independent claim 1, as previously presented. Nor does the Lencki '617 reference teach, suggest, or make obvious:

defining a number of member rules to be applied in conjunction with the number of plan sponsor rules, wherein the instructions are executed by the processor to allow a plan sponsor to define the number of plan sponsor rules **and** a plan member to define the number of member rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts.

as recited in independent claim 19, as previously presented. Additionally, the Lencki '617 reference does not teach, suggest, or make obvious:

allowing a plan sponsor to define a first defined set of fund use rules **and** a plan member to define a second defined set of fund use rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts, dependent upon authority being granted by the plan sponsor.

as recited in independent claim 26, as previously presented.

The Examiner, however, went on to state in section 5 of the September 3, 2008, FOA that “Deavers suggests payments from a plurality of accounts, (See Deavers abstract, column 1, lines 12-36, column 4, lines 40-58).” Based upon thorough examination of the cited portions of the reference, Appellant respectfully submits that the Deavers ‘352 reference does not teach, suggest, or make obvious using plan sponsor **and** plan member rules “in order to define payment of at least a portion of a claim **from** between at least **two different employee benefit accounts**”, as recited in Appellant’s independent claims 1, 19, and 26, as previously presented.

In fact, Appellant respectfully submits that the Deavers ‘352 reference in a number of locations teaches away from using plan sponsor **and** plan member rules “in order to define payment of at least a portion of a claim **from** between at least **two different employee benefit accounts**”, as recited in Appellant’s independent claims 1, 19, and 26, as previously presented. The Deavers ‘352 reference appears to teach setting funds aside for “payment of future medical expenses” or “to pay for a health insurance policy with a high deductible and the remainder to pay medical expenses” and “to retain the balance, if any, for future use or savings” in an interest bearing account. (Col. 1, lines 11-36).

The funds appear to be invested in a “Medical Savings Fund Account” (MSFA) where “Each participant has the option to select the type of money market mutual fund as the investment vehicle – taxable or tax-free – that fits within the financial needs of the participant.” (Col. 3, lines 51-54). Such investments appear to be governed “Under various state tax rules and regulations currently in effect and

proposed Federal legislation (1995) [where] there are and could be limitations placed upon the dollar amounts of investments or deposits”. (Col. 4, lines 43-46).

As such, the Deavers ‘352 reference appears to teach that, when investments or deposits are received in excess of the limitations described above, “the monies might be split to permit the maximum permissible to be included in the MSFA with excess placed in a separate account.” (Col. 4, lines 59-62). Deavers ‘352 appears to further teach in column 10, lines 29-35, that:

the system of the invention would identify the regulatory or tax advantage and segregate the moneys put into a first mutual fund account, which would contain the maximum permitted by regulation or law and a second mutual fund account from which moneys would be transferred as the amount in the first account would fall below the maximum permitted by regulation or law.

Appellant respectfully submits that the Deavers ‘352 reference teaches “processing and recording the transactions in a medical savings fund account” (see Title) whereby a single MSFA is used for payment of future medical expenses or to pay for a health insurance policy with a high deductible and the remainder to pay medical expenses. To enable such an interest bearing MSFA to comply with applicable state and/or federal limitations, in the event that investments or deposits to the MSFA (i.e., the first mutual fund account) are received in excess of the applicable state and/or federal limitations, Deavers ‘352 appears to teach that the monies are split to permit the maximum permissible to be included in the single

MSFA with the excess placed in a separate account (i.e., the second mutual fund account).

That is, Deavers '352 appears to teach segregating the moneys put into the single MSFA first mutual fund account and the second mutual fund account in order to transfer moneys from the second mutual fund account into the single MSFA as the amount in the single MSFA falls below the maximum permitted by regulation or law. Moneys invested in the single MSFA appear to fall below the maximum as a result of payment from the single MSFA of future medical expenses or payment of the health insurance policy with a high deductible and possible payment of the remainder for medical expenses.

As presented above, Appellant respectfully submits that the Deavers '352 reference teaches payment of future medical expenses or payment of the health insurance policy with a high deductible and possible payment of the remainder for medical expenses from the single MSFA. Hence, Appellant respectfully submits that Deavers '352 teaches away from using plan sponsor **and** plan member rules "in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts", as recited in Appellant's independent claims 1, 19, and 26, as previously presented.

As such, Appellant respectfully submits that the deficiencies of the Lencki '617 reference with regard to independent claims 1, 19, and 26, as acknowledged by the Examiner in section 5 of the September 3, 2008, FOA, are not cured by the Deavers '352 reference. Accordingly, Appellant respectfully requests

reconsideration and withdrawal of the § 103(a) rejection of independent claims 1, 19, and 26, as previously presented, as well as those claims that depend therefrom.

CONCLUSION

Appellant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner and/or members of the Board are invited to telephone Appellant's attorney Edward J. Brooks III at (612) 236-0120 to facilitate this appeal.

CERTIFICATE UNDER 37 C.F.R. §1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: **MS Appeal Brief-Patents** Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450, on this 19th day of September, 2008.

Alison L. Subenda
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AL
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9/19/2008
Date:

VIII. CLAIMS APPENDIX

1. (Previously Presented) A system for benefits management, comprising:
 - a server including an application interface and access to a data store having one or more client files, wherein a client file includes a definable set of business rule instructions executed by a processor to manage and administer benefits and includes fund use rule instructions executed by a processor to access and apply funds to payment of claims from a plurality of accounts; and
 - a program operable on the server to apply the definable set of business rules, wherein the instructions are executed by the processor to allow a plan sponsor to define a first defined set of the fund use rules and a plan member to define a second defined set of the fund use rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts, dependent upon authority being granted by the plan sponsor.
2. (Previously Presented) The system of claim 1, wherein the the at least two different employee benefit accounts are selected from the group of:
 - a health reimbursement arrangement (HRA) account;
 - a flex spending account (FSA);
 - a vacation account;
 - a fitness club account;
 - a retiree health benefits account; and
 - a salon account.
3. (Original) The system of claim 1, wherein the definable set of business rules are definable by a plan sponsor of a health insurance plan.
4. (Original) The system of claim 1, wherein the one or more client files include plan sponsor files associated with a health care insurance plan.

5. (Previously Presented) The system of claim 4, wherein the program tracks adjudicated claims submitted by the plan member and applies the definable set of business rules to manage available funds in a flexible spending account (FSA) and a health reimbursement arrangement (HRA) account secondary to application of a plan carrier's business rules for the health care insurance plan.

6. (Previously Presented) The system of claim 1, wherein the definable set of business rules include:

- a selection of which funds between a flexible spending account (FSA) and a health reimbursement arrangement (HRA) are to be applied first to an adjudicated claim determined among selected categories within particular classes of services;
- and

- a selection of a payment relationship between the plan sponsor and the plan member among selected categories within particular classes of services.

7. (Original) The system of claim 6, wherein the selected categories include categories selected from the group of:

- an insured category;
- a co-pay category;
- a deductible category;
- a co-insurance category; and
- an ineligible category.

8. (Original) The system of claim 6, wherein particular classes of services include in-network classes and out-of-network classes for services selected from the group of:

- a preventive care service;
- an office visit;
- a hospital service;
- an urgent care center service;
- a prescription service;

- a dental service;
- a vision service;
- a chemical dependency service; and
- an emergency room service.

9. (Original) The system of claim 6, wherein the selection of a payment relationship includes a plan sponsor rule selection from among the group of:

- a percentage payment amount; and
- a fixed payment amount among selected categories within particular classes of services.

10. (Original) The system of claim 6, wherein the selection of which funds between the FSA and the HRA are to be applied includes a selection of a plan sponsor rule and a member rule.

11. (Previously Presented) The system of claim 1, wherein the one or more client files include one or more member files accessible from a remote device by one or more entities having authorized access rights, the one or more entities selected from the group of:

- the plan sponsor;
- the plan member; and
- a third party administrator.

12. (Previously Presented) The system of claim 1, wherein each client file is associated with the plan sponsor and wherein the plan sponsor accesses its associated client file from a remote device to select among the definable set of business rules.

13-18. (Canceled)

19. (Previously Presented) A computer readable medium including a program having instructions executable by a processor to perform a method, comprising:
- defining a number of plan sponsor rules to be applied secondary to the application of a set of business rules defined in a health insurance plan by a plan carrier; and
 - defining a number of member rules to be applied in conjunction with the number of plan sponsor rules, wherein the instructions are executed by the processor to allow a plan sponsor to define the number of plan sponsor rules and a plan member to define the number of member rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts.
20. (Previously Presented) The medium of claim 19, wherein defining the number of plan sponsor rules includes selecting a payment relationship between the plan sponsor and the plan member for handling a deductible payment associated with a particular claim type under the health insurance plan.
21. (Previously Presented) The medium of claim 19, wherein defining the number of plan sponsor rules includes selecting a payment relationship between the plan sponsor and the plan member for handling a co-payment associated with a particular claim type under the health insurance plan.
22. (Previously Presented) The medium of claim 19, wherein defining the number of plan sponsor rules includes selecting a payment relationship between the plan sponsor and the plan member for handling a coinsurance payment associated with a particular claim type under the health insurance plan.
23. (Previously Presented) The medium of claim 19, wherein defining the number of plan sponsor rules includes the plan sponsor selecting a hierarchy among a number of plan member health benefit accounts for application of funds to payment of a particular claim type under the health insurance plan.

24. (Previously Presented) The medium of claim 23, wherein defining the number of member rules includes the plan member selecting a hierarchy among a number of plan member health benefit accounts for application of funds to payment of a particular claim type under the health insurance plan secondary to implementation of the number of plan sponsor rules.

25. (Original) The medium of claim 19, wherein the method further includes tracking usage and available balances in a number of plan member health benefit accounts according to the number of plan sponsor rules and member rules.

26. (Previously Presented) A method for providing benefits, comprising:
selecting a health benefit plan offered by a plan carrier;
further defining rules in addition to rules defined for the health benefit plan by the plan carrier in order to manage fund allocation from a plurality of plan member benefit accounts, including a health reimbursement account, according to different categories of services; and
allowing a plan sponsor to define a first defined set of fund use rules and a plan member to define a second defined set of fund use rules in order to define payment of at least a portion of a claim from between at least two different employee benefit accounts, dependent upon authority being granted by the plan sponsor.

27. (Original) The method of claim 26, wherein further defining rules includes defining a number of plan sponsor rules associated with different categories of services.

28. (Original) The method of claim 26, wherein further defining rules includes defining a number of member rules associated with different categories of services.

29. (Previously Presented) The method of claim 26, further defining rules includes:

selecting which funds between funds in multiple health benefit accounts are to be applied first to a post-adjudicated claim under the health care plan according to various claim type categories; and

selecting a payment relationship between the plan sponsor and the plan member according to various claim type categories associated with different types of services.

30. (Previously Presented) The method of claim 29, wherein selecting the payment relationship includes defining a plan sponsor percentage payment amount for a claim type category associated with different types of services, and wherein the claim type is selected from the group including:

- an insured category;
- a co-pay category;
- a deductible category; and
- a co-insurance category.

31. (Canceled)

32. (Previously Presented) The method of claim 29, wherein selecting the payment relationship includes defining a plan sponsor fixed payment amount for a claim type category associated with different types of services, and wherein the claim type is selected from the group including:

- an insured category;
- a co-pay category;
- a deductible category; and
- a co-insurance category.

33-34. (Canceled)

IX. EVIDENCE APPENDIX

No evidence is submitted.

X. RELATED PROCEEDINGS APPENDIX

As there are no appeals or interferences known to Appellant's Representatives which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no copies of decisions rendered by a court or the Board to submit.